



December 19, 2001

Mr. Brett Bray  
Division Director  
Motor Vehicle Division, Administration  
Texas Department of Transportation  
P.O. Box 2293  
Austin, Texas 78768

OR2001-5974

Dear Mr. Bray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156395.

The Texas Department of Transportation (the "department") received a request for information relating to a motor vehicle dealer's distinguishing number and surety bonding company. You ask whether the requested surety bond information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted. As you do not mention the dealer distinguishing number, we assume that the department has released that information. If not, then the department must do so at this time. See Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000).

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common law right of privacy. Common law privacy protects private facts about individuals. Information must be withheld from disclosure under section 552.101 in conjunction with common law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert.

*denied*, 430 U.S. 931 (1977). In prior decisions, this office has determined that financial information relating only to an individual ordinarily satisfies the first element of the common law privacy test, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision Nos. 545 at 4 (1990), 523 at 4 (1989), 373 at 3-4 (1983).<sup>1</sup>

You inform this office that under section 503.033(a) of the Transportation Code, the Motor Vehicle Board (the "board") of the department must obtain proof that an applicant for a new or renewal independent motor vehicle dealer's license or wholesale motor vehicle auction general distinguishing number has either a properly executed surety bond in the amount of \$25,000.00 or other security described in section 503.033. You state that in order to implement this statute, the board requires applicants to submit the original surety bond, or other form of security, before an application will be issued. You note that most applicants obtain a surety bond. Section 503.033 further provides that:

(d) A person may recover against a surety bond or other security if the person obtains against a person issued a motor vehicle dealer general distinguishing number or a wholesale motor vehicle auction general distinguishing number a judgment assessing damages and reasonable attorney's fees based on an act or omission on which the bond is conditioned that occurred during the term for which the general distinguishing number was valid.

Transp. Code § 503.033(d). You explain that "[a]s a consequence of this provision, the [board] receives requests for copies of the surety bonds on file for particular dealers on an almost daily basis from consumers, other dealers, and their attorneys who want to make a claim against the bond." You also state that "[s]ince the applicant must submit the original bond to our offices and because claims may be made against bonds long after the dealer in question has ceased business operations, we know of no other practical way for those who wish to make a claim against a dealer's bond to obtain the information regarding the bond other than from our licensing files."

Having considered your representations, we conclude that although the requested surety bond information constitutes personal financial information, there is a legitimate public interest in the disclosure of this information. Therefore, the requested surety bond information is not protected by common law privacy under section 552.101 of the Government Code and must

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<sup>1</sup>We note that common law privacy protects the rights of individuals, not those of corporate entities. A corporate entity has no right of privacy. *See United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co., Inc.*, 777 S.W.2d 434, 436 (Tex. App.--Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)); *see also* Open Records Decisions No. 620 at 3-4 (1993), 192 at 4 (1978).

be released. *See also* Gov't Code § 552.022(a)(15) (providing for required public disclosure of information regarded as open to the public under an agency's policies, unless the information is expressly confidential under other law).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

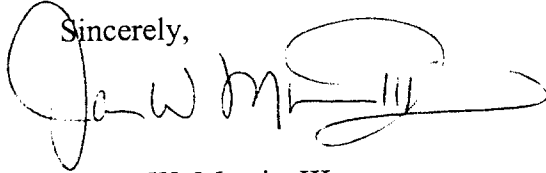
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J W Morris III', with a large, stylized flourish at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 156395

Enc: Submitted documents

c: Mr. Frederick L. Unger  
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(w/o enclosures)